

## REMARKS

Claim 1, as amended, calls for removing a hard mask using an etch that is selective of the hard mask over the spacer. A polysilicon gate structure is covered with a hard mask to prevent the formation of the silicide on the gate structure. A sidewall spacer extends along a common surface and covers the gate structure and covers at least part of the mask.

The claim was rejected under Section 102 based on the '530 Lee patent. On one hand it is asserted that although Lee teaches a CMP process or a stripping process, the stripping process is inherently selective. In order to be inherently selective, it must necessarily be selective.

The citation to the Yeh patent is inappropriate to support inherency. Either the process necessarily occurs in Lee, in which case it is inherent, or it does not. Whatever happens in Yeh is completely irrelevant to that analysis. Any attempt to bolster a Section 102 rejection with a second reference would also be inappropriate.

In order to be inherent, something must necessarily happen. See M.P.E.P. § 2112. Here, the thing that must necessarily happen is that the mask is removed by an etch that is "selective of the hard mask over the spacer." There is no such inherency here. One of the alternatives is to use CMP which is inherently non-selective and would etch the mask and the layer 152 equally. Thus, the reference teaches one alternative which is necessarily non-selective. Thus, there is no reason to believe that the other etch would necessarily be selective. It could be selective or non-selective and there is no teaching of making any selective removal.

Moreover, it is suggested that the layer 152 may subsequently be removed any way. Layer 152 is apparently what the Examiner asserts to be the sidewall spacer. It is explained that "the layer 152 may be left in place or stripped." See column 4, line 22. Thus, if it does not matter whether it is left in place or stripped, it equally well does not matter whether it ends up getting etched some or not.

Thus, not only does the reference fail to teach inherently selectively etching the hard mask over the spacer, but it teaches away from the same. It suggests that it does not matter what you do to the spacer relative to the hard mask.

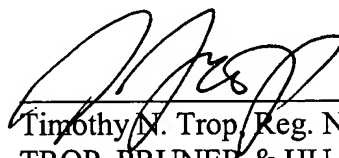
There is no basis to conclude that Lee necessarily uses a selective etch of the hard mask over the spacer. Again, this is because he teaches a CMP process that is not selective, he suggests removing the spacer 152 or not, as the user desires, both of which indicate that

selectivity is of no concern. Moreover, there is nothing which suggests that selectivity is necessary in the stripping process step one. Rather than being inherent, it seems much more likely that the stripping process is non-selective since there is no concern about preserving the layer 152 for the reasons described above.

Therefore, reconsideration of the rejection of claim 1, based on Lee, is respectfully requested.

Respectfully submitted,

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